



TO: Honorable Chair and Board of the Puente Hills Habitat Preservation Authority
Andrea Gullo, Executive Director

FROM: Anita Luck, Special Counsel
Payam J. Mostafavi, Special Counsel

DATE: July 10, 2020

RE: Benefit Assessment District

This memorandum will provide an overview of assessment districts, including the general procedures and requirements for forming the districts, the boundaries of the district, a description of relevant applicable assessment acts, potential costs and provide a description of an alternative option of a Mello-Roos community facilities district as compared to an assessment district.

I. Introduction

The Puente Hills Habitat Preservation Authority (“Authority”) Board has asked our office to determine the feasibility of creating a special financing district - a benefit assessment district in particular - as a source of local revenue. Special financing districts place annual charges on the property tax roll. Specifically, the goal of the Authority is to consider options for raising revenue to fund the maintenance of the preserve, one of which would be to form a special financing district by levying a benefit assessment on benefitting property owners. The Board could include wildfire prevention and protection services including general fuel modification costs such as clearing of brush and reduction of other hazards of fire, staff oversight, posting of fire safety signs, etc., park ranger safety and security patrols, trail maintenance, administrative costs, staff to oversee contracts, revegetation, legal costs, and other costs related to running a preserve.

To provide background for the discussion, below is a brief overview of assessment districts:

Assessment District (“AD”)

- Must determine the Special Benefit, may not be able to fund all of the improvements.
- Any property receiving a Special Benefit must be included within boundaries of the assessed area.
- Property Owner vote weighted by assessment amount; i.e., \$100 = 100 votes; \$200 = 200 votes

- 50% + 1 of returned ballots (weighted by assessment amount) (technically a protest ballot, so if more than 50% protest the district will not be formed)
- Parcels will pay annual assessments which will be included on the county property tax bill

Summary and Recommendations:

- There are several AD acts which may authorize the services the Authority wishes to fund. The most applicable statutes are the (a) the Improvement Act of 1911 (Streets & Highway Code section 5000 et seq.), (b) the Municipal Improvement Act of 1913 (Streets & Highway Code section 10000 et seq.), (c) the Lighting and Landscaping Act of 1972 (Streets & Highway Code section 22500 et seq.), and (d) the Open Space Maintenance Act (Government Code section 50575 et seq.).
- Both the Lighting and Landscaping Act and Municipal Improvement Act of 1913 seem well-suited to serve the purposes of the Authority. However, it seems best to proceed under the Lighting and Landscaping Act. Not only does this Act authorize services which the Authority desires to fund, but also it allows the ADs boundaries to extend beyond the territory of the Authority. Moreover, an owner's petition is not required to institute proceedings as the Authority may initiate proceedings on its own.
- The procedures for establishing an AD and levying an assessment are based upon the California Constitution, Proposition 218 and applicable assessment statute chosen.
- The boundary of an AD may cross jurisdictional boundaries among several local or regional government entities. To cross into the jurisdiction of another agency, the agency's consent must be obtained. Such consent constitutes assent to the assumption of jurisdiction thereover for all purposes and authorizes the agency to take any steps required for or suitable for the consummation of the work extending outside the limits of the Authority, and the levying, collecting and enforcement of the assessments to cover the expenses thereof and the issuance and enforcement of bonds to represent unpaid assessments.
- Another financing option for the Authority besides an AD is a CFD but would require a 2/3 vote of the electorate.

II. Discussion

There are several assessment district acts which may authorize the services the Authority wishes to fund: (a) the Improvement Act of 1911 (Streets & Highway Code section 5000 et seq.), (b) the Municipal Improvement Act of 1913 (Streets & Highway Code section 10000 et seq.), (c) the Lighting and Landscaping Act of 1972 (Streets & Highway

Code section 22500 et seq.), and (d) the Open Space Maintenance Act (Government Code section 50575 et seq.). The first three Acts are likely the best alternatives as the last one would require a petition of the property owners and cannot be initiated by the Authority alone. The Lighting and Landscaping Act of 1972 seems to be the Act most closely aligned with what the Authority would like to do. The assessments under the Act may be used to maintain open space.

The Authority's Joint Exercise of Powers Agreement (the "JPA Agreement") provides the authority to form an AD. Section 1.3 of the JPA Agreement states that one purpose of the JPA Agreement is to provide for the utilization of any type of appropriate method of financing of capital acquisitions and improvements, and for the maintenance, servicing, and operation thereof, to the greatest extent permitted pursuant to any applicable provision of the Streets and Highways Code of the State of California, or any other applicable statutes, and consistent with the provisions of Proposition 218.

Benefit Assessment District Overview

The California Constitution defines a benefit assessment as "any levy or charge upon real property by an agency for a special benefit conferred upon the real property" (Article XIID §2(b)).

Local officials and property owners can use benefit assessments to pay for public improvements and services that benefit property. Rather than billing everyone, benefit assessments localize the costs of public improvements and activities, so only property owners who receive a "special benefit" from the property improvement pay. The California Constitution defines a special benefit as "a particular and distinct benefit over and above general benefits conferred on real property located in the district or to the public at large. General enhancement of property value does not constitute 'special benefit.'" (Article XIID §2(i)).

Local governments utilize benefit assessments as a financing mechanism to distribute costs in proportion to benefits. Benefit assessments ensure that the defined group of property owners who use and benefit from the public services, pay for them.

Benefit assessments are not taxes. Benefit assessments differ from taxes in three ways. First, benefit assessments are charges on property for activities or projects that directly benefit property. Local officials, on the other hand, can levy taxes with no clear or direct benefit to particular individuals or property. Second, benefit assessments have different vote requirements than taxes. There are two types of taxes — general and special. Under the California Constitution, general taxes require majority-voter approval; special taxes need 2/3 voter-approval. In addition property taxes would need a 2/3 vote of the electorate. In contrast, benefit assessments need approval on a weighted majority of the affected property owners' ballots. Third, the parcel's benefit assessment amount is proportionate to the benefit received by the parcel. By contrast, ad valorem property taxes

reflect a parcel's assessed value, and parcel taxes are typically levied as a flat rate per parcel.

Formation of an Assessment District and Proposition 218's Requirements

The procedures for establishing an assessment district and levying an assessment are based upon the California Constitution, Proposition 218, and the applicable assessment statutes. Typically, the process to form an AD is approximately 4-12 months. However, this is an estimate, as the timeline varies based on numerous factors such as time needed to prepare the engineer's report, time to educate property owners, and the length of the approval process.

The principal requirements for formation of assessment districts are:

- Petition or Resolution. Some assessment acts require property owners to petition local officials to form ADs; others permit local officials to initiate a district with a resolution of their governing body; some laws allow both methods.
- Engineer's Report. A professional engineer's report discussing the proposed improvements, services, estimated costs, diagram of proposed district boundaries, and calculation of a fair allocation of the benefit assessments among the benefited parcels in direct proportion to the amount of special benefit each receives. As such, the general benefits must be distinguished from the special benefits conferred on the parcels;
- Apportioning Benefits. Proposition 218 requires agencies to use the professional engineer's report to estimate the amount of special benefit landowners would receive from the project or service as well as the amount of "general benefit", which is defined as an overall benefit to society at large. Proposition 218 allows local agencies to recoup from assessments only the proportionate share of the value of the special benefit. That is, if special benefits represent 50% of total benefits, local agencies may use the assessments to recoup half of the project or service's costs. Local agencies must use other revenues to pay for any remaining costs. Local agencies must then set individual assessment charges, so that no property owner pays more than their proportional share of the special benefit that flows from a project or service.
- Public Meeting. This meeting is for public comment only; local officials cannot adopt the assessment plan until a later public hearing.
- Mailed Ballots. Local officials must mail a ballot to all affected property owners to vote for or protest against the proposed assessment. A notice containing the date, time, place of the public hearing, when ballots will be counted, and specific information about the proposed benefit assessment will also be included in the

mail. The purpose of the benefit assessment, the amount that would be charged to the owner's parcel, how that amount was calculated, and the payment duration will also be enclosed.

- Public Hearing. After local officials hold their public meetings, they must call a public hearing where the benefit assessment plan can be approved or rejected. Property owners must be notified of the hearing at least 45 days in advance. At the hearing, an impartial person must tabulate the ballots in public view. Unlike ballots cast in elections, ballots cast in assessment proceedings are not secret. This is necessary because ballots must be weighted by the amount each affected property owner will pay under the proposed assessment. If a majority of the weighted votes does not oppose the assessments, the agency may vote to levy the assessment.
- Levying Assessments. After local officials adopt the assessment plan, they levy the benefit assessment. Most assessments acts allow the agency to begin work on the facilities and services immediately. Assessments appear on a property owner's annual property tax bill. Some assessment plans call for benefit assessments to increase occasionally to keep up with the cost-of-living, or as new facilities and services become available. If the plan calls for the benefit assessments to increase according to a formula or range, property owners' bills can increase automatically. However, if local officials want larger increases, they must go through the same procedures: another public meeting, another election, and another public hearing.

Boundary of Assessment District

Generally, the boundary of an AD is determined by the parcels receiving the special benefit as any parcels receiving such benefit are to be included in the AD. In *Silicon Valley Taxpayers' Assn., Inc. v. Santa Clara County Open Space Authority* (2008) 44 Cal.4th 431, the California Supreme Court indicated that a well-drawn district is limited to only parcels receiving special benefits from the improvement (i.e., every parcel within that district receives a shared special benefit.) The engineer's report must be conducted to determine parcels specially benefiting from the services. Based on this report, a diagram of the proposed district boundaries can be prepared. Since the jurisdiction of the Authority is large, it may determine to form many smaller assessment districts or to form one large district.

The designated area of benefit or boundary of an AD formed pursuant to the Improvement Act of 1911, Municipal Improvement Act of 1913, or the Lighting and Landscaping Act of 1972 may cross jurisdictional boundaries among several local or regional government entities. (Streets and Highways Code sections 5115-5119). The Improvement Act of 1911, pursuant to S&H Code section 5115, provides that when the public interest or convenience so requires, and whenever the proposed work is of such a character that it directly and peculiarly affects property in two or more cities, or in one or

more cities and counties, and that the purposes sought to be accomplished by the work can best be accomplished by a single, comprehensive scheme of work, the local agency has full power and authority to extend the work or the boundaries of the district to be assessed therefor beyond the territorial limits of the Authority. Moreover, under S&H Code section 5117, the Authority may include within the boundaries of an AD lands lying within the boundaries of any one or more cities, or counties, when such lands, in the opinion of the legislative body conducting the proceeding, will be benefited by the proposed work if the consent of the legislative body of any territory proposed to be assessed is first obtained to the formation of the AD and, if any of the proposed work is to be done within such territory, to the work described in the resolution of intention and the assumption of jurisdiction thereover for the purposes aforesaid prior to the adoption thereof.

As such, to cross into the jurisdiction of another agency, the proposed resolution of intention must be submitted to the relevant agencies to obtain their consent. The consent constitutes assent to the assumption of jurisdiction thereover for all purposes and authorizes the agency initiating the proceeding to take each and every step required for or suitable for the consummation of the work extending outside the limits of the Authority, and the levying, collecting and enforcement of the assessments to cover the expenses thereof and the issuance and enforcement of bonds to represent unpaid assessments. (S&H Code section 5118). The Municipal Improvement Act of 1913 and the Lighting and Landscaping Act of 1972 both adopted S&H Code sections 5115-5119 by reference.

Note that Section 1.1 of the JPA Agreement states that one *purpose* of the JPA Agreement is to provide for the acquisition, restoration, and/or maintenance of open space lands in the La Puente Hills / Whittier Hills areas in the vicinity of the County Sanitation District No. 2 of Los Angeles County's property, and additionally, that the Authority will give special consideration to land acquisitions, habitat restoration, trailhead construction, and recreational and/or educational amenities on open space lands within and for the benefit of the community of Hacienda Heights. However, this provision does not necessarily limit the Authority's taxing power to tax within the jurisdictions that are party to the agreement to the extent that power has been delegated.

In addition, the area serviced by the assessment district and the assessments levied can likely go beyond the boundary of the Authority as long as the relevant agencies' consent is obtained pursuant to the S&H Code sections mentioned above.

Assessment Act Descriptions

Improvement Act of 1911 (Streets & Highway Code section 5000 et seq.)

This Act provides for the for the construction of certain public improvements, including, but not limited to, as recreation areas, landscaping, fire protection systems, geologic hazard abatement, ornamental vegetation, etc., together with limited acquisition of property necessary, the levy of assessments and the issuance of bonds.

However, pursuant to this act, improvements must be completed before their total cost is assessed against the properties within the district. Contractors are, in effect, reimbursed for their work from the proceeds of the district. This aspect of the 1911 Act requires that sufficient funds be available for the project before it is begun and is a major drawback of the legislation. Therefore, this is not a good option for the purposes of the Authority.

Municipal Improvement Act of 1913 (Streets & Highway Code section 10000 et seq.)

The 1913 Act may be used by cities, counties, joint powers authorities, and certain special districts which are empowered to make any of the improvements authorized under the Act. Moreover, it specifically authorizes the construction and maintenance of all the facilities authorized under the 1911 Act.

This Act allows the levy of assessments to pay for capital costs and operating and maintenance costs of public improvements. However, unlike the 1911 Act, the total cost of improvements is assessed against the benefited properties before the improvements are completed. As such, it is a more viable option than the 1911 Act. Nevertheless, the services authorized are not necessarily consistent with those the Authority desires to fund.

Lighting and Landscaping Act of 1972 (Streets & Highway Code section 22500 et seq.)

The Lighting and Landscaping Act of 1972 authorizes local agencies to form assessment districts for the purpose of financing costs and expenses of landscaping, lighting, and other improvements and services in public areas. This Act authorizes services that are consistent with those the Authority wishes to fund. For example, the Act authorizes providing for the life, growth, health, and beauty of landscaping, including cultivation, irrigation, trimming, spraying, fertilizing, or treating for disease or injury; the removal of trimmings, rubbish, debris, and other solid waste; and the acquisition of land for park, recreational, or open-space purposes.

This type of AD is formed in large part following the requirements listed above. The sponsoring agency conducts a study, prepares an engineer's report and proposes the formation of a district and the levy of assessments. Affected property owners are then notified and a public hearing is held. In order to approve the district, a majority vote of affected property owners through an assessment balloting procedure is required. Once approved, assessments will be placed on property tax bills each year to pay for the improvements and services. Assessments that pay for ongoing services will continue as long as services are provided.

Examples of local agencies who have used Lighting and Landscaping assessments to fund maintenance of open space is the City of Santa Clarita and the Cosumnes Community Services District, which services the City of Elk Grove and unincorporated areas of Sacramento County. Specifically, the City of Santa Clarita established an AD under this Act to protect, maintain, service and improve parks, parkland, and open space areas and to provide for the planning and administration for the acquisition and construction of parks, open space, trails, and grounds, as well as the operations and maintenance supplies to maintain the parks, facilities, trails, and open space. Moreover, the AD serviced and levied assessment on properties outside the city's boundaries. The City of Santa Clarita's AD serves as a good model to follow if the Authority proceeds with formation of an AD.

Therefore, this Act seems most suited to serve the purposes of the Authority. Not only does this Act authorize services which the Authority desires to fund, but also it allows the AD's boundaries to extend beyond the territory of the Authority. Moreover, an owner's petition is not required to institute proceedings as the Authority may initiate proceedings on its own.

Open Space Maintenance Act (Government Code section 50575 et seq.)

Another type of assessment district which is a good option for the Authority is one formed under the Open Space Maintenance Act. Under this Act, an ad valorem special assessment may be levied to pay the costs of conservation planning, maintenance, improvements, and protection related to open spaces, such as removing fire hazards, planting trees and shrubs, and acquiring fire prevention equipment.

An Open Space District is *initiated by a petition of the owners of 25% or more of the assessed value of land in the area*; this factor strongly hinders the viability of this type of AD as an option for the Authority due to the fact the proceedings cannot be initiated by the Authority itself and the difficulty of organizing the numerous property owners that would need to be involved to successfully petition. If there is a successful petition, then the sponsoring agency must then prepare an ordinance of intention that specifies the district boundaries, the proposed projects, the annual assessment, the maximum assessment, and set a time for a protest hearing. If approved, the district will levy an annual assessment based on the assessed value of land, to be collected on the local agency's property tax bill.

The actions authorized by the Act are consistent with the actions the Authority desires to fund. For example, the Act authorizes the planning, maintaining, improving, protecting, limiting the future use of or otherwise conserving open spaces and areas within the local agency and the reduction of the hazards of fire; clearing and removing or ordering the clearing and removal of dry grass, stubble, brush, rubbish, litter or other inflammable material which endangers the public safety by creating a fire hazard; acquiring, constructing and maintaining works, not otherwise regularly provided by the

local agency which are necessary or convenient for the prevention and extinguishing of fires; destroying and removing noxious, dangerous or unsightly weeds; and planting and maintaining trees, shrubs, lawns and other vegetation.

The designated area of benefit or boundary of the AD formed pursuant to this Act may likely also cross jurisdictional boundaries among several local or regional government entities. However, the laws governing this type of AD do not explicitly state the extent to which the boundaries of the AD can cross jurisdictional lines.

Associated Costs with Assessment District

To give an idea of the costs associated with formation, included is the costs incurred by the Mountains Recreation and Conservation Authority Area ("MRCA") when forming a similar assessment district. This AD was formed pursuant to the Municipal Improvement Act of 1913, the Improvement Bond Act of 1915, and the Special Assessment Investigation, Limitation and Majority Protest Act of 1931.

MRCA paid approximately \$12.3 million to acquire lands to be within the areas of benefit. and paid approximately \$180,000 for the Consultant's services, which includes the cost for the engineer's report (\$50,000-\$80,000).

MRCA's total budget for acquisition, improvement and maintenance of open space properties was \$15,530,606. Of the total budget amount, the MRCA contributed \$3,082,799 from sources other than the assessments. The budget was in anticipation of potential costs which include, but are not limited to, appraisals, title searches, title insurance, legal fees, and consultant fees.

Nevertheless, it is common to reimburse these costs, where were incurred as a result of forming the AD, from the initial AD assessments.

Measure A (2016)

A benefit assessment district would not conflict with Measure A, which authorizes the Los Angeles County Regional Park and Open Space District to levy a special tax annually on improved parcels within the District which encompasses the entire County, including all cities and the unincorporated areas of the County.

Pros and Cons of Benefit Assessment District

Pros

- Benefit assessments link costs to benefits
 - Benefit assessments let local officials distinguish between beneficiaries and non-beneficiaries of government activities. Assessments let local

officials charge the property owners who benefit from improvements and services. By billing the direct beneficiaries of public activities, benefit assessments help local agencies operate more like businesses.

- Benefit assessments empower property owners.
 - Under some benefit assessment law, property owners can initiate benefit assessment proposals. When property owners want neighborhood improvements — a park, more street lights, better paved roads — they can petition their local officials to form an assessment district to pay for the costs. If local officials try to impose assessments for unpopular improvements, property owners can protest the benefit assessment. Because property owners control the benefit assessments on their property, they control the amenities that they're required to pay for.
- Benefit assessments foster local control of resources.
 - Local officials can't control every aspect of their budgets. Federal and state government subventions are a big part of local governments' collective revenues. Because the California Constitution limits property tax rates and local officials must get voter approval for new taxes, local governments don't have many funding choices when communities want more public services. Benefit assessments give local officials a tool to finance the local amenities that their constituents want.

Cons

- Benefit assessments replace property tax revenues.
- Benefit assessments make debt more expensive.
 - Local officials can repay bonds with benefit assessments. However, bonds that are backed by benefit assessments can be more expensive than other types of bonds because they involve the risk that property values may fall or that many property owners may fail to pay assessments. Financial markets' cautious approach to assessment-backed bonds also drives up their cost. Unlike other bonds, assessment bonds are usually unrated and uninsured, resulting in higher interest rates.
- Benefit assessment elections may be unfair.
 - Proposition 218 requires the weighted majority of property owners who submit ballots to approve benefit assessments. Each property owner has a specific weight attached to their ballot, depending upon the amount of benefit the property will receive. If a large developer owns massive tracts of land, the developer's weighted ballot could silence the voice of smaller property owners. In other words, larger property owners can dominate the assessment approval process with ballots that literally count more than the votes of smaller property owners.

Mello-Roos Community Facilities Districts (“CFD”) vs. Assessment Districts

Benefit assessment districts differ from Mello-Roos Act Community Facilities Districts, which levy special taxes for community improvements and services, such as schools, freeway interchanges, library services and recreation programs. Mello-Roos taxpayers do not necessarily benefit from the activities funded with Mello-Roos taxes. On the other hand, benefit assessment districts levy benefit assessments on property owners to pay for improvements and services that directly benefit their property.

A CFD is created by a sponsoring local government agency. The formation process typically is around 6 months, but each formation process is different and may contain circumstances that change the usual course of events. The agency must adopt a resolution stating the intention to establish a CFD. A public hearing on the formation of the district must be held within 30 to 60 days from adoption of the resolution. Notice of this public hearing is then published in a generally circulated newspaper, and a map of the proposed district filed with the clerk of the legislative body and the County Recorder. Oral or written protests against the formation or the boundaries of the proposed CFD, or against the types of facilities proposed may be made at or prior to the public hearing. If written protests against the district are filed by 50% or more of the registered voters residing within the district, the proceedings are abandoned.

When the public hearing is concluded and the agency decides to establish the district, it adopts a resolution stating the validity of all prior proceedings, formation of the district, and the rate and distribution of the special tax.

Once the public hearing process is concluded and the CFD is formed, the agency calls an election of the qualified voters within the CFD. The special tax must be approved by a two-thirds majority vote of residents living within the proposed boundaries. It can be at a regular election or a special election.

Once approved, a Special Tax Lien is placed against each property in the CFD. Property owners then pay a Special Tax each year. A CFD or an AD could also be used to fund improvements or acquisitions of land with bonds.

Mello-Roos taxes are not based on the value of the property. Instead, they are apportioned by taking into account property characteristics (e.g., the use of the property, square footage of the structure, and lot size). The CFD submits the tax charges to the County, who adds them to your annual Property Tax Bill. Charges for this tax vary, but they do not exceed the maximum amount specified when the CFD was created.

Below are some summary tables comparing assessment district financing with CFD financing:

DISTRICT TYPE	PROS	CONS
<p style="text-align: center;">Community Facilities Districts</p>	<ul style="list-style-type: none"> • Allows for more flexibility with regard to which parcels are included within the CFD and how they are taxed • Does not require a “Special Benefit” finding • All improvement costs may be financed • Can include maintenance component • Can do annexations • Good ongoing financing mechanism • Provides ongoing source of funds which can be used for “pay as you go” if not needed for debt service 	<ul style="list-style-type: none"> • Negative connotation of “Mello-Roos” • Higher voting threshold (2/3rds) • Can be overturned by initiative • Funds may not be immediately available • Annexations may open CFD to further challenges later on
<p style="text-align: center;">Assessment Districts</p>	<ul style="list-style-type: none"> • Lower voting threshold • Landowner vote • Can include maintenance component • Good ongoing financing mechanism • Provides ongoing source of funds for maintenance 	<ul style="list-style-type: none"> • Parcels that benefit must be included in the AD • Requires a “Special Benefit” finding • Only special benefits may be assessed • Special and General Benefit Findings have been successfully challenged in lower courts • Can be overturned by initiative • Annexations may open AD to further challenges later on

Benefit Assessment District

July 10, 2020

Page 13

DISTRICT TYPE	VOTING THRESHOLD	VOTERS	VOTING BASIS	BOUNDARY	BENEFIT	EXEMPTIONS
Community Facilities District (“CFD”) (Special Tax)	66.6% (two thirds approval of votes cast) Election	Property Owners (if less than 12 Registered Voters living within proposed CFD). otherwise Registered Voters	Property Owner vote=1 vote per acre or portion thereof Registered Voter = 1 vote per Registered Voter	May be determined with discretion	Special Tax may be apportioned on a “reasonable basis”	Exemptions provided for particular land uses can be discretionary
Assessment District (“AD”) (Assessment)	50% + 1 of returned ballots (weighted by assessment amount) (technically a protest ballot, so more than 50% cannot protest)	Landowner	Weighted by assessment amount; i.e. \$100 = 100 votes; \$200=200 votes	Any parcels receiving benefit to be included in the AD	Special Benefit and General Benefit analysis must be done. Any general benefit may not be assessed.	Exemptions for publicly owned property may only be applied if there is clear evidence demonstrating that a parcel does not receive a special benefit.